



House of Representatives

General Assembly

File No. 250

February Session, 2018

House Bill No. 5398

House of Representatives, April 5, 2018

The Committee on Banking reported through REP. LESSER of the 100th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT PROHIBITING STATE AND LOCAL LAW ENFORCEMENT AGENCIES FROM PROVIDING CERTAIN PROPERTY TO A FEDERAL AGENCY FOR THE PURPOSE OF SUCH PROPERTY'S FORFEITURE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 54-33g of the 2018 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective October 1, 2018*):

4 (a) When any property believed to be possessed, controlled,
5 designed or intended for use or which is or has been used or which
6 may be used as a means of committing any criminal offense, or which
7 constitutes the proceeds of the commission of any criminal offense,
8 except a violation of section 21a-267, 21a-277, 21a-278 or 21a-279, has
9 been seized as a result of a lawful arrest or a lawful search that results
10 in an arrest, which the state claims to be a nuisance and desires to have
11 destroyed or disposed of in accordance with the provisions of this
12 section, the Chief State's Attorney or a deputy chief state's attorney,
13 state's attorney or assistant or deputy assistant state's attorney may

14 petition the court not later than ninety days after the seizure, in the
15 nature of a proceeding in rem, to order forfeiture of such property.
16 Such proceeding shall be deemed a civil suit in equity, in which the
17 state shall have the burden of proving all material facts by clear and
18 convincing evidence. The court shall identify the owner of such
19 property and any other person as appears to have an interest in such
20 property, and order the state to give notice to such owner and any
21 interested person by certified or registered mail.

22 (b) The court shall hold a hearing on the petition filed pursuant to
23 subsection (a) of this section not more than two weeks after the
24 criminal proceeding that occurred as a result of the arrest has been
25 nolledd, dismissed or otherwise disposed of. The court shall deny the
26 petition and return the property to the owner if the criminal
27 proceeding does not result in (1) a plea of guilty or nolo contendere to
28 any offense charged in the same criminal information, (2) a guilty
29 verdict after trial to a forfeiture-eligible offense for which the property
30 was possessed, controlled, designed or intended for use, or which was
31 or had been used as a means of committing such offense, or which
32 constitutes the proceeds of the commission of such offense, or (3) a
33 dismissal resulting from the completion of a pretrial diversionary
34 program.

35 (c) If the court finds the allegations made in such petition to be true
36 and that the property has been possessed, controlled or designed for
37 use, or is or has been or is intended to be used, with intent to violate or
38 in violation of any of the criminal laws of this state, or constitutes the
39 proceeds of a violation of any of the criminal laws of this state, except a
40 violation of section 21a-267, 21a-277, 21a-278 or 21a-279, and that a plea
41 of guilty or nolo contendere to such offense or another charge in the
42 same criminal information, or a guilty verdict after trial for such
43 forfeiture-eligible offense, or a dismissal resulting from the completion
44 of a pretrial diversionary program has been entered, the court shall
45 render judgment that such property is a nuisance and order the
46 property to be destroyed or disposed of to a charitable or educational
47 institution or to a governmental agency or institution, except that if

48 any such property is subject to a bona fide mortgage, assignment of
49 lease or rent, lien or security interest, such property shall not be so
50 destroyed or disposed of in violation of the rights of the holder of such
51 mortgage, assignment of lease or rent, lien or security interest.

52 (d) (1) When the condemned property is money (A) on and after
53 October 1, 2014, and prior to July 1, 2016, the court shall order that
54 such money be distributed as follows: (i) Seventy per cent shall be
55 allocated to the law enforcement agency, including the Department of
56 Emergency Services and Public Protection and local police
57 departments, responsible for investigating the criminal violation and
58 seizing the money, and such local police departments shall use such
59 money for the detection, investigation, apprehension and prosecution
60 of persons for the violation of criminal laws, and any money allocated
61 to the Department of Emergency Services and Public Protection shall
62 be deposited in the General Fund; (ii) twenty per cent shall be
63 deposited in the Criminal Injuries Compensation Fund established in
64 section 54-215; and (iii) ten per cent shall be allocated to the Division of
65 Criminal Justice and deposited in the General Fund; and (B) on and
66 after July 1, 2016, such money shall be deposited in the General Fund.

67 (2) When the condemned property is a valuable prize, which is
68 subject to a bona fide mortgage, assignment of lease or rent, lien or
69 security interest, such property shall remain subject to such mortgage,
70 assignment of lease or rent, lien or security interest.

71 (e) When any property or valuable prize has been declared a
72 nuisance and condemned under this section, the court may also order
73 that such property be sold in accordance with procedures approved by
74 the Commissioner of Administrative Services. Proceeds of such sale
75 shall first be allocated toward the balance of any mortgage, assignment
76 of lease or rent, lien or security interest, and the remaining proceeds of
77 such sale, if any, shall be allocated in accordance with subparagraphs
78 (A) to (C), inclusive, of subdivision (1) of subsection (d) of this section.
79 In any criminal prosecution, secondary evidence of property
80 condemned and destroyed pursuant to this section shall be admissible

81 against the defendant to the same extent as such evidence would have
82 been admissible had the property not been condemned and destroyed.

83 (f) If the court finds the allegations not to be true, irrespective of the
84 findings in the criminal proceeding, or that the property has not been
85 kept with intent to violate or in violation of the criminal laws of this
86 state, or that the property does not constitute the proceeds of a
87 violation of the criminal laws of this state, or that the property is the
88 property of a person who is not a defendant, the court shall order the
89 property returned to the owner forthwith and the party in possession
90 of such property pending such determination shall be responsible and
91 personally liable for such property from the time of seizure and shall
92 immediately comply with such order.

93 (g) Failure of the state to proceed against such property in
94 accordance with the provisions of this section shall not prevent the use
95 of such property as evidence in any criminal trial.

96 (h) (1) Except when otherwise required by federal law, no state or
97 local law enforcement agency shall refer, transfer or otherwise
98 relinquish possession of property seized as a result of a lawful arrest or
99 a lawful search that results in an arrest to a federal agency for the
100 purpose of the property's forfeiture to such federal agency under the
101 federal Controlled Substances Act.

102 (2) No state or local law enforcement agency participating in a joint
103 task force or any other multijurisdictional collaboration with a federal
104 agency shall accept payment of any kind from such federal agency,
105 including the distribution of proceeds of any property forfeited to the
106 federal agency as a result of the joint task force or multijurisdictional
107 collaboration, unless the aggregate net equity value of such property
108 exceeds one hundred thousand dollars, excluding the value of
109 contraband.

110 (3) Nothing in subdivision (1) or (2) of this subsection shall be
111 construed to restrict (A) any state or local law enforcement agency
112 from acting alone or with a federal or other agency to seize contraband

113 or property such state or local law enforcement agency has probable
114 cause to believe has been used as a means of committing any criminal
115 offense, or which constitutes the proceeds of the commission of any
116 criminal offense, for which such contraband or property is subject to
117 forfeiture under state or federal law, or (B) the federal government
118 from acting without the involvement of a state or local law
119 enforcement agency to seize contraband or property and seek
120 forfeiture of such contraband or property under federal law.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2018	54-33g

BA *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 19 \$	FY 20 \$
Criminal Justice, Div.; Department of Emergency Services and Public Protection	GF - Potential Revenue Loss	Less than 10,000	Less than 10,000

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 19 \$	FY 20 \$
Municipal Police Departments	Potential Revenue Loss	Less than 10,000	Less than 10,000

Explanation

The bill prohibits the state from receiving certain federal agency proceeds from property seized under federal law (known as equitable sharing program) and results in a potential minimal revenue loss of less than \$10,000 each year to the Division of Criminal Justice and law enforcement agencies.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**HB 5398*****AN ACT PROHIBITING STATE AND LOCAL LAW ENFORCEMENT AGENCIES FROM PROVIDING CERTAIN PROPERTY TO A FEDERAL AGENCY FOR THE PURPOSE OF SUCH PROPERTY'S FORFEITURE.*****SUMMARY**

This bill generally prohibits state and local law enforcement agencies from referring, transferring, or relinquishing property seized during a lawful search or arrest to a federal agency for the purposes of forfeiting the property to the agency under the federal Controlled Substances Act (i.e., drug offenses). The bill specifies that the ban does not apply when federal law requires the property seizure.

The bill also prohibits state and local law enforcement participating in a joint task force or other multijurisdictional collaboration with a federal agency from accepting payment from the agency. Payment includes, under the bill, the distribution of proceeds from property forfeited to the federal agency as part of the task force or collaboration, unless the property's total value exceeds \$100,000, excluding contraband.

The bill specifies that it does not restrict (1) state and local law enforcement from acting alone or with a federal or other agency to seize contraband or property if there is probable cause to believe it is the proceeds of a criminal offense or was used to commit a criminal offense and (2) federal law enforcement actions. The contraband or property is subject to forfeiture under applicable state or federal laws.

Existing state law limits forfeiture proceedings to property seized during a lawful search that results in an arrest. And it requires the court to deny the state's petition to forfeit property and require the

property's return to its owner unless the proceeding results in a conviction (e.g., guilty plea, nolo contendere, guilty verdict).

EFFECTIVE DATE: October 1, 2018

COMMITTEE ACTION

Banking Committee

Joint Favorable

Yea 18 Nay 1 (03/20/2018)